



FCC MAIL SECTION

PUBLIC NOTICE

Nov 10 37 AM '94

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET, N.W.
WASHINGTON, D.C. 20554

DIST. BY
DA 94-1083

News Media Information (202) 632-5050. Recorded listing of releases and texts (202) 632-0002.

September 30, 1994

COMMENT SOUGHT ON DRAFT PROTECTIVE ORDER (PR DOCKET NO. 94-105)

At an *ex parte* meeting held on September 30, 1994, in the proceeding on the Petition of the People of the State of California and the Public Utilities Commission of the State of California to Retain Regulatory Authority over Intrastate Cellular Service, referenced above, to which all parties of record were invited, representatives of the Private Radio Bureau requested that all interested parties submit their comments on the attached Draft Protective Order on or before Friday, October 7, 1994. This Draft Protective Order addresses confidentiality issues raised by the Request for Proprietary Treatment of Documents Used in Support of Petition to Retain Regulatory Authority Over Intrastate Cellular Service Rates filed by the State of California and the Public Utilities Commission of the State of California on August 8, 1994.

By the action of the Chief, Land Mobile and Microwave Division, Private Radio Bureau. For further information contact Gina Harrison, Private Radio Bureau, (202) 632-7125.

DRAFT

PROTECTIVE ORDER

Adopted: ; Released:

By the Chief, Private Radio Bureau:

It is HEREBY ORDERED:

1. For purposes of this Order, "Confidential Information" shall mean and include trade secrets and commercial or financial information which is privileged or confidential under Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552 (b)(4), as well as material claimed to be gathered in an ongoing antitrust investigation of the cellular industry by the Attorney General of the State of California (Investigation).

2. Confidential Information submitted herein by the People of the State of California and the Public Utilities Commission of the State of California (California) shall be segregated from all material filed and deemed non-confidential as generally set forth in the pleadings filed publicly by California on August 9, 1994, and subsequent revisions filed on September 13, 1994, in PR Docket No. 94-105. Confidential information, as redacted, shall consist of:

a. Market share data as contained in pages 29 to 34 of the unredacted Petition of the People of the State of California and the Public Utilities Commission of the State of California To Retain State Regulatory Authority Over Intrastate Cellular Service Rates (Petition) and Appendix E thereto. The data on page 29 is disaggregated by carrier, and on pages 30-35, aggregated by market. Some data on page 30 is further aggregated by combining data in two markets. The data in Appendix E is aggregated as to resellers by market, and disaggregated for cellular carriers.

b. Capacity utilization figures as contained in pages 50-53 of the Petition, and in Appendix M. This data is aggregated for the Los Angeles market on page 51 and Appendix M-1, and disaggregated as to specific carriers on pages 52-53 of the Petition and Pages M-1 to M-3 of Appendix M.

c. Financial data per subscriber unit, including revenues, operating expenses, plant, operating income, subscriber growth percentages for 1989-93, found in Appendix H to the Petition. This data is disaggregated as to specific cellular carriers.

d. Number of customers per year, per rate plan, both wholesale and retail as contained in Appendix J to the Petition. This data is disaggregated as to specific cellular carriers.

e. Material redacted from pages 42, 45 and 75 of the Petition which California claims to have been gathered in the Investigation.

3. Confidential Information may be disclosed:

a. to counsel for the Parties listed hereinafter in Appendix A (Parties) and their associated attorneys, paralegals and clerical staff predicated on a "need to know" basis.

b. to specified persons, including employees of the Parties, requested by counsel to furnish technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of formulating filings in connection with PR Docket No. 94-105.

4. Counsel may request the Commission to provide one copy of Confidential Information (for which counsel must, as a prerequisite, acknowledge receipt pursuant to this Order), and counsel may thereafter make no more than two additional copies but only to the extent required and solely for the preparation and use in this proceeding, and provided further, that all such copies shall remain in the care and control of counsel at all times. Following the filing of Further Comments on ____, 1994, counsel shall retain custody of the Confidential Information until such time as it is necessary to prepare additional filings in connection with PR Docket No. 94-105 in the discretion of counsel. If such additional filings are necessary, counsel shall retain custody of the Confidential Information following submission of such additional filings. Counsel shall return to the Commission within forty-eight hours after the final resolution of PR Docket No. 94-105 all Confidential Information originally provided by the Commission as well as all copies made, and shall certify that no material whatsoever derived from such Confidential Information has been retained by any person having access thereto, except that counsel may retain copies of pleadings submitted on behalf of clients.

5. Confidential Information shall not be used by any person granted access under this Order for any purpose, other than for use in this proceeding, and shall not be used for competitive business purposes or otherwise disclosed by such persons to any other person except in accordance with this Order. This shall not preclude the use of any material or information in the public domain or which has been developed independently by any other person.

6. a. Counsel inspecting or copying Confidential Information shall apply for access to the materials covered by this Order under and by use of the "Attorney Application For Access To Materials Under Protective Order" appended to this Order.

b. Counsel may disclose Confidential Information to persons to whom disclosure is permitted under the terms of this Order only after advising such persons of the terms and obligations of this Order.

c. Counsel shall provide to the FCC and, in the absence of a need for confidentiality, to California, the name and affiliation of each person other than counsel to whom

disclosure is made or to whom actual physical control over the documents is provided. To the extent that anyone's name is not disclosed to California, that fact shall be disclosed to the FCC and California.

7. Parties may in any pleadings that they file in this proceeding, reference the Confidential Information, but only if they comply with the following procedures:

a. any portions of the pleadings that contain or disclose Confidential Information are physically segregated from the remainder of the pleading:

b. the portions containing or disclosing Confidential Information are covered by a separate letter referencing this Protective Order:

c. each page of any Party's filing that contains or discloses Confidential Information subject to this Order is clearly marked "confidential information included pursuant to Protective Order, DA 94-___."

d. the confidential portion of the pleading shall be served upon the Secretary of the Commission, California and the other Parties and not placed in the Commission's Public File, unless the Commission directs otherwise. The Parties may provide courtesy copies to the Legal Advisor to the Private Radio Bureau Chief, who will distribute the copies to the appropriate Commission personnel.

8. Disclosure of materials described herein shall not be deemed a waiver by California or any other Party in any other proceeding, judicial or otherwise, of any privilege or entitlement to confidential treatment of such Confidential Information. Inspecting parties, by viewing said documents: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any other proceedings; and (c) agree that accidental disclosure of privileged information shall not be deemed a waiver of the privilege.

9. The entry of this Order is without prejudice to the rights of California to apply for additional or different protection where it is deemed necessary or to the rights of the Parties to request further or renewed disclosure of Confidential Information. Moreover, it in no way binds the Commission from disclosing any information where the public interest so requires.

10. This Order is issued under Section 0.331 of the Commission's Rules, 47 C.F.R. § 0.331, and is effective on its release date.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller, Chief
Private Radio Bureau

APPENDIX A

PARTIES

AirTouch Communications

American Mobile Telecommunications Association, Inc.

Bakersfield Cellular Telephone Co.

Bay Area Cellular Telephone Company

California Public Utilities Commission, People of the State of California

Cellular Agents Trade Association

Cellular Carriers Association of California

Cellular Resellers Association, Inc.

Cellular Telecommunications Industry Association

County of Los Angeles

E. F. Johnson Co.

GTE Service Corporation

Los Angeles Cellular Telephone Company

McCaw Cellular Communications, Inc.

Mobile Telecommunications Technologies Corp.

National Cellular Resellers Association

Nextel Communications, Inc.

Paging Network, Inc.

Personal Communications Industry Association

Utility Consumers' Action Network & Towards Utility Rate Normalization

US West Cellular of California